

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JEROLD E. WHEAT)

For Appellant: Louis Fong
Certified Public Accountant

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Jerold E. Wheat for refund of personal income tax in the amount of \$2,227.00 for the year 1975.

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The sole issue presented by this appeal is whether appellant's claim for refund is barred by the statute of limitations set forth in section 19053 of the Revenue and Taxation Code.

On April 15, 1981, appellant filed his 1975 personal income tax return. The return showed a self-assessed tax of \$939.00 and claimed withholding credits of \$3,166.00. Appellant requested that the \$2,227.00 excess of withholding over self-assessed tax liability be refunded. On July 14, 1981, respondent notified appellant that his claim for refund of the credit balance was disallowed because the claim was not filed within the four-year period prescribed by section 19053 of the Revenue and Taxation Code and was, therefore, barred by the statute of limitations. The instant appeal is a result of respondent's denial of the claim.

Pursuant to Revenue and Taxation Code section 18551.1, subdivision (b), tax which is actually deducted and withheld during any calendar year is deemed to have been paid by the recipient on the 15th day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit. Appellant is, therefore, deemed to have paid the amount claimed as a credit on April 15, 1976. Section 19053 of the Revenue and Taxation Code provides, in pertinent part, as follows:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, ...

Under the provisions of section 19053, the last date a timely claim for refund could be filed by appellant was April 15, 1980. Appellant's return, which for purposes of this appeal is treated as a claim for refund of the credit balance, was filed on April 15, 1981, one year after the four-year period prescribed by Revenue and Taxation Code section 19053.

Respondent contends that section 19053 is mandatory and that under its clear terms, the latest date on which appellant could have timely filed his claim for refund was April 15, 1980. Appellant contends that the statute of limitations should not be applied in this

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instance because he encountered difficulty in assembling the records needed to prepare the 1975 return. Additionally, appellant claims that his discussions with respondent, wherein he was assured that a refund could be issued so long as the amount of withholding exceeded the assessed tax liability, precludes respondent from asserting the statute of limitations as a bar to the instant refund claim.

Respondent contends that the application of the doctrine of estoppel is not appropriate in the instant case because first, appellant has not presented any credible evidence showing that he talked to respondent, and secondly, the advice appellant claims he was given did not induce him to delay filing his claim until after the expiration of the statute of limitations period.

In numerous previous appeals, we have dealt with the statute of limitations issue presented by this appeal. (See, e.g., Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974.) We have consistently held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure, for whatever reason, to file a claim for refund within the statutory period bars him from doing so at a later date. There is no reason to reach a different conclusion in the instant appeal.

It is also well established that the doctrine of estoppel will not be invoked against the state except where grave injustice would otherwise result. (City of Long Beach v. Mansell, 3 Cal.3d 462, 493 [91 Cal.Rptr. 23, 476 P.2d 423] (1970); California Cigarette Concessions v. City of Los Angeles, 53 Cal.2d 865, 869 [3 Cal.Rptr. 675, 350 P.2d 715] (1960).) In an appropriate case, a government agency may be estopped to rely on the statute of limitations in denying a claim where the agency's erroneous advice has induced the claimant to delay filing until after the limitations period has expired. (See Fredrichsen v. City of Lakewood, 6 Cal.3d 353, 358 [99 Cal.Rptr. 13, 491 P.2d 805] (1971).) The burden of proving estoppel is on the party asserting it. (Girard v. Gill, 261 F.2d 695 (4th Cir. 1958).) Appellant's allegation that he talked to respondent and was told he could obtain a refund so long as the amount of withholding exceeded the assessed tax does not satisfy the burden of proof necessary to support a finding of estoppel. There is no allegation that respondent advised appellant

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that the claim could be filed at any time or that there was no statute of limitations period. As such, we cannot conclude that the invocation of the statute of limitations by respondent should be barred by estoppel, and must sustain respondent's action in denying the claim for refund.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Jerold E. Wheat for refund of personal income tax in the amount of \$2,227.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day
of June , 1983, by the State Board of Equalization,
with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg
and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

_____, Member